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C O N F I D E N T I A L SECTION 01 OF 03 LJUBLJANA 000388

SIPDIS

DEPT FOR EUR/CE AND EUR/SCE

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TAGS: [PGOV](#) [PREL](#) [EUN](#) [HR](#) [SI](#)

SUBJECT: SLOVENIA-CROATIA BORDER ARBITRATION: RATIFICATION
BY 2/3 MAJORITY POSSIBLE REQUIREMENT

REF: A. LJUBLJANA 385

[1](#)B. LJUBLJANA 358 AND PREVIOUS

Classified By: Pol-Econ Chief Yuriy Fedkiw, reasons 1.4(b) and (d)

SUMMARY

[1](#)1. (C) As Slovenia's Constitutional Court moves forward with its review of the Slovenia-Croatia arbitration agreement, court justice and former senior diplomat Ernest Petric has asked an independent panel of former justices -- some publicly critical of the agreement -- for their opinions on the agreement's constitutionality as well as on whether ratification requires a 2/3 majority in Parliament. Justice Minister Ales Zalar told CDA that he believes the Court will be split in its review, but that he is confident the agreement will be found constitutional and the public will support the agreement in a subsequent consultative referendum. The alternative is to amend either the agreement or the constitution, neither of which is particularly palatable. Few observers expect the Court to find the arbitration agreement unconstitutional, but a growing number now expect that a two-thirds majority will be required for Parliament to ratify the agreement. If this is indeed the case, Prime Minister Pahor will need to use all of his political and diplomatic skills to convince opposition leaders to support the arbitration agreement.
End summary.

COURT REQUESTS OUTSIDE EXPERT REVIEW

[1](#)2. (U) In November 2009, the Government of Slovenia (GOS) submitted the historic Slovenia-Croatia border dispute arbitration agreement signed by both countries' Prime Ministers to the Constitutional Court for its review. The government asked the Court to consider only one part of the agreement: Article 3(a) which tasks the arbitration tribunal to rule on the land and sea border. The review

process is expected to last anywhere from several weeks to several months.

13. (C) In a somewhat surprising development, on December 8, local dailies reported that Constitutional Court Justice Ernest Petric, rapporteur for the Court's review, asked three former constitutional court justices for their opinions both on constitutionality of the agreement and on possible solutions to a scenario if the arbitration agreement were found to be unconstitutional. To Post's understanding, the only possible remedies at present are to amend either the constitution or the agreement. Petric also asked the panel to advise if a 2/3 majority in Parliament would be required for ratification of the agreement. (Note: Petric had told CDA earlier in November that the court could rule that the agreement requires a 2/3 majority. At that time, Petric did little to conceal his view that the arbitration agreement should have a two-thirds majority, saying that such important decisions should be based on broad consensus, "not passed by one or two votes." End Note.)

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JUSTICE MINISTER PREDICTS COURT SPLIT, YET CONFIDENT ON MOVING FORWARD

14. (C) At a dinner hosted by CDA on December 9, Justice Minister Zalar said that he was confused by Petric's recent moves regarding the Constitutional Court review. Zalar, a former judge, said that Petric's decision to call in three former justices as independent experts came as a surprise, as the government expected that the members of the current Constitutional Court would be the experts on such legal questions. Not mentioning any specific names, Zalar noted that it was particularly disturbing that some of the former justices had recently publicly expressed their criticism of the agreement. Zalar said that he believed the Court would not reach a consensus and that the justices' opinions on the agreement's constitutionality would be split. If consensus is not reached, by law the majority opinion would prevail.

15. (C) Zalar also noted with some concern that the review process included the transfer to the Court of all classified and unclassified government documentation related to the resolution of the border dispute since independence. The justice minister said that he was worried about this aspect of the review process because a public freedom of information request for the information would put

the
current government in a very tenuous situation, with the
potential
for release of classified information not intended for public
dissemination.

¶6. (C) In general, Zalar was optimistic that in the current
environment
the public would support the agreement in a referendum, which
he fully
expected would happen after the Court concluded its review.
He felt
strongly that both sides should, to the extent possible,
present joint
recommendations on issues such as the selection of
arbitrators and use
of the mediation chapter within the agreement to come to a
closer
agreement on final border resolution, thereby staying one
step ahead
of the arbitration process.

COMMENT

¶7. (C) Most legal experts believe the Court is unlikely to
declare the
arbitration agreement unconstitutional, but the Court itself
is giving
no hints. It is also unclear why Petric made the decision to
"outsource" the review to a panel of experts before the Court
makes
its decision. The most straightforward explanation may be
that the
current members of the court do not have the requisite
breadth of
experience to address such a politically sensitive
constitutional
matter. Slovenian Constitutional Court justices normally
serve a nine
year term; seven of the current nine justices each have less
than 26
months of experience on the Court's bench, one joining the
Court as
recently as December 19.

¶8. (C) Post expects the Court will rule on the agreement
sometime early

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in 2010. Even if the Court finds the agreement
constitutional, a
growing number of observers now believe that ratification
will require
a two-thirds majority. It is not at all clear, however, that
the
government has taken into account the possible need for a
two-thirds
majority. In our view, the only way to achieve such a majority
is for the
government to convince at least some members of the
opposition that it
is up to the task of defending Slovenia's position on the
maritime
border and prevailing in arbitration. Many currently have
strong doubts
on both counts. End comment.
FREDEN